

401 KAR 42:060. UST system release and corrective action requirements.

RELATES TO: KRS 224.1, 224.1-400(11), 224.10, 224.40, 224.43, 224.46, 224.60, 40 C.F.R. 280, Subparts E, F, G, 40 C.F.R. 281, Subpart D, 42 U.S.C. 6991-6991m

STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 224.60-137

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to develop and conduct programs that provide for the prevention, abatement, and control of contaminants that may threaten the environment. KRS 224.60-105 requires the cabinet to regulate underground storage tanks (USTs) by requiring registration, minimum construction and performance standards, leak detection, recordkeeping, release reporting, corrective action, closure, financial responsibility, and other requirements to protect public health and the environment. KRS 224.60-105(3) requires the cabinet to establish a regulatory program that implements federal requirements for UST systems. This administrative regulation establishes the requirements for UST system release reporting, release response, permanent closure of UST systems, change in service of UST systems, site characterization, corrective action, and UST facility classification, including screening levels of a UST system containing petroleum.

Section 1. Reporting for Releases, Spills, and Overfills.

(1) Reporting of confirmed or suspected releases shall be as established in 40 C.F.R. 280.50 and this section.

(2) Except as established in subsection (3) of this section, reporting and cleanup requirements for spills and overfills shall be as established in 40 C.F.R. 280.53.

(3) Confirmed releases, spills, and overfills shall be reported immediately, in accordance with KRS 224.1-400(11), to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380.

(4) An unusual operating condition, or an unconfirmed UST system release, shall be reported immediately as a suspected release to the cabinet's 24-hour Environmental Emergency Response Team number at (800) 928-2380 or (502) 564-2380, unless:

(a) The UST system equipment or component is found not to be releasing regulated substances to the environment;

(b) Any defective UST system equipment or component is immediately repaired or replaced; and

(c) For secondarily contained UST systems, any liquid in the interstitial space not used as part of the interstitial monitoring method is immediately removed.

Section 2. Environmental Emergencies. During the course of an environmental emergency response, the Environmental Response Team shall have the authority to prevent delivery, deposit, storage, or dispensing of regulated substances and to require all actions necessary to protect human health and the environment.

Section 3. Off-Site Impacts. Requirements for Investigations due to off-site impacts shall be as established in 40 C.F.R. 280.51.

Section 4. Release Investigation and Confirmation.

(1) Procedures for suspected release investigation and confirmation shall be as established in 40 C.F.R. 280.52 and this administrative regulation.

(2) Owners and operators shall immediately investigate and test, within seven (7) days, any UST component that might contribute to a confirmed or suspected release, or an unusual operating condition required to be reported in accordance with Section 1 of this administrative

regulation. Any defective UST component shall be repaired or replaced as soon as practical, but shall not exceed the time requirements established in 401 KAR 42:020.

(3) Owners and operators shall perform a site check, if directed by the cabinet, in accordance with Section 3.0 of the UST Corrective Action Manual.

Section 5. Release Response and Corrective Action.

(1) General requirements shall be as established in 40 C.F.R. 280.60 through 280.67.

(2) The procedures in the UST Corrective Action Manual shall be followed.

(3) In addition to the requirements established in 40 C.F.R. 280.62 and 280.63, the owner or operator shall complete and submit to the cabinet the UST Site Check Checklist, DWM 4268.

(4) In addition to the requirements established in 40 C.F.R. 280.63 and 280.65, the owner or operator shall complete and submit to the cabinet, when directed in writing, the:

(a) UST Over-Excavation Checklist, DWM 4267;

(b) UST Site Investigation Checklist, DWM 4269;

(c) UST Vapor Intrusion Building Assessment Checklist, DWM 4271; and

(d) UST Vapor Intrusion Assessment Checklist, DWM 4270.

(5) In addition to the requirements established in 40 C.F.R. 280.66 and 280.67, the owner or operator shall complete and submit to the cabinet, if directed in writing, the:

(a) UST Corrective Action Certification, DWM 4263;

(b) UST Over-Excavation Checklist, DWM 4267;

(c) UST Groundwater Monitoring Checklist, DWM 4264; and

(d) UST Interim Corrective Action Checklist, DWM 4265.

(6) The forms referenced in subsections (3) through (5) of this section shall be certified by a professional engineer or a professional geologist.

(7) Owners and operators shall undertake, as directed in writing by the cabinet, corrective actions necessary to ensure that contamination of all domestic-use wells, domestic-use springs, and domestic-use cisterns impacted by a release from a regulated UST system does not exceed the maximum contaminant levels, established in 401 KAR Chapter 8, applicable to the regulated substance stored.

Section 6. Permanent Closure or Change in Service. (1) Owners or operators performing permanent closure, or change in service, of a UST system shall comply with the requirements of Section 4.0 of the UST Corrective Action Manual.

(2)(a) This administrative regulation shall apply to an owner or operator of a UST system that has a UST system release confirmed after October 6, 2011, or has submitted a UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, that has been received by the appropriate Division of Waste Management regional office after October 6, 2011.

(b) With the exception of those UST systems with requirements established in paragraph (c) of this subsection, the owners and operators of a UST system that have, prior to October 6, 2011, either submitted a notice of intent to permanently close UST systems or reported a confirmed release to the cabinet, shall comply with the closure requirements in effect on the date the notice of intent to permanently close UST systems was received by the appropriate Division of Waste Management regional office or the confirmed release was reported to the cabinet. This paragraph shall not apply to the screening levels, which shall be determined in accordance with Section 7 of this administrative regulation.

(c) An owner or operator shall comply with the permanent closure requirements that were in place prior to April 18, 1994, for a UST system:

1. From which dispensing had ceased prior to April 18, 1994, regardless of the submittal

date of the UST Notice of Intent to Permanently Close Underground Storage Tank System;

2. For which a UST Notice of Intent to Permanently Close Underground Storage Tank System was submitted after December 22, 1988, but prior to April 18, 1994; or

3. For which a confirmed release was reported prior to April 18, 1994, regardless of the submittal date of the UST Notice of Intent to Permanently Close Underground Storage Tank System.

(3)(a) Owners and operators shall notify the cabinet of intent to permanently close or make a change in service for a UST system a minimum of fourteen (14) days prior to beginning either the permanent closure or change in service in accordance with subsections (1) and (4) of this section.

1. The notice shall be completed and submitted on the UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266.

2. Initial abatement action shall not alleviate owners and operators of the responsibility to notify the cabinet of the intent to permanently close a UST system.

3. The cabinet may specify a shorter notification time prior to permanent closure if permanent closure activities are completed in response to actions conducted in accordance with Sections 2.0 and 3.0 in the UST Corrective Action Manual or actions directed by the Environmental Response Team.

(b) The UST Notice of Intent to Permanently Close Underground Storage Tank or Piping, DWM 4266, shall only be valid for twelve (12) months following submittal to the cabinet.

(4) An assessment at permanent closure or change in service shall be as established in paragraphs (a) through (c) of this subsection.

(a)1. In order to complete permanent closure, or a change in service of a UST system, owners and operators shall measure for the presence of a UST system release in accordance with Section 2.0 of the UST Corrective Action Manual.

2. Permanent closure activities shall be reported to the cabinet within ninety (90) days after UST system removal, closure in place, or change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

(b) If analytical results from permanent closure sampling indicate that further actions are necessary, those actions shall be performed at the written direction of the cabinet, and in accordance with Section 5.0 of the UST Corrective Action Manual.

(c) The handling, transportation, and disposal of a regulated substance from a UST system and contaminated soils, backfill materials, groundwater, cleaning liquids, and other similar materials generated during activities performed in accordance with this administrative regulation shall be performed in accordance with applicable requirements of 401 KAR Chapters 30 through 49.

(5) Applicability to previously closed UST systems shall be as established in 40 C.F.R. 280.73.

(6) Requirements for reporting and maintaining closure records shall be as established in paragraphs (a) through (c) of this subsection.

(a)1. Owners or operators shall complete and submit to the cabinet a UST Closure Assessment Report Checklist, DWM 4262, within ninety (90) days of the date of permanent closure or a change in service, in accordance with Section 4.7 of the UST Corrective Action Manual.

2. The UST Closure Assessment Report Checklist, DWM 4262, shall be certified by a professional engineer or a professional geologist.

(b) Owners or operators shall complete and submit a UST Certification of Properly Cleaned USTs, DWM 4260, to the cabinet if a UST system is permanently closed by removal.

(c) Recordkeeping shall be as established in 40 C.F.R. 280.74.

Section 7. UST Facility Classification.

(1)(a) An owner or operator of a UST system for which a UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted, or a confirmed UST system release of petroleum was reported to the cabinet, on or after April 18, 1994, shall be required to classify the UST facility in accordance with this section.

(b) The owner or operator shall, if the UST system is permanently closed, or if directed by the cabinet, in order to appropriately classify the UST facility, submit a UST Classification Guide, DWM 4261, which shall be certified by a professional engineer or a professional geologist.

(c) Section 7.0 of the UST Corrective Action Manual shall be used in completing the UST Classification Guide, DWM 4261, for determining the classification of a UST facility.

(d) Section 7.0 of the UST Corrective Action Manual lists the applicable screening levels for petroleum constituents for each classification.

(2) An owner or operator of a UST system that either submitted a UST Notice of Intent to Permanently Close Underground Storage Tank System, or reported a confirmed UST system release of petroleum to the cabinet, or for which dispensing ceased, prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation, unless:

(a) The owner or operator reports an additional confirmed UST system release of petroleum to the cabinet; and

(b) The additional confirmed UST system release of petroleum is commingled with a UST system release of petroleum associated with the UST Notice of Intent to Permanently Close Underground Storage Tank System submitted prior to April 18, 1994, or the UST system release of petroleum reported to the cabinet prior to April 18, 1994.

(3) An owner or operator of a UST system that chooses to remove from the ground a UST system for which dispensing ceased prior to April 18, 1994, shall not be required to classify the UST facility in accordance with this administrative regulation.

(4) An owner or operator may submit, in accordance with 401 KAR 30:020, Section 2, a written request for a variance to the applicable screening levels established in accordance with this administrative regulation if:

(a) Prior to October 6, 2011:

1. A UST Notice of Intent to Permanently Close Underground Storage Tank System containing petroleum was submitted to the cabinet; or

2. A confirmed UST system release of petroleum was reported to the cabinet; and

(b) The allowable levels previously applicable to the UST facility are less stringent than the screening levels established by this administrative regulation.

(5) An owner or operator, required to classify a UST facility in accordance with this administrative regulation, shall utilize the screening levels established in Section 7.0 of the UST Corrective Action Manual, regardless of the date of permanent closure of the UST system.

Section 8. No Further Action Letter.

(1) A no further action letter shall be issued if the cabinet has determined that all applicable requirements in 401 KAR Chapter 42 have been met.

(2) Any unpaid annual fees due in accordance with 401 KAR 42:020, shall be paid in full prior to the cabinet issuing a no further action letter.

(3) If a threat to human health or the environment exists, related to a release or permanent closure for which a no further action letter was previously issued, the cabinet shall revoke the no further action letter and require necessary action in accordance with 401 KAR Chapter 42.

Section 9. Extensions.

- (1) The owner or operator of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive.
- (2) The extension request shall be submitted in writing and received by the UST Branch of the Division of Waste Management prior to the deadline.
- (3) The cabinet may grant an extension, if an extension would not have a detrimental impact on human health or the environment.
- (4) The cabinet shall not grant an extension for requirements established in Sections 1, 2, 4(1), or 4(2) of this administrative regulation.

Section 10. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "UST Certification of Properly Cleaned USTs", DWM 4260, September 2019;
 - (b) "UST Classification Guide", DWM 4261, September 2019;
 - (c) "UST Closure Assessment Report Checklist", DWM 4262, September 2019;
 - (d) "UST Corrective Action Certification", DWM 4263, September 2019;
 - (e) "UST Groundwater Monitoring Checklist", DWM 4264, September 2019;
 - (f) "UST Interim Corrective Action Checklist", DWM 4265, September 2019;
 - (g) "UST Notice of Intent to Permanently Close Underground Storage Tank or Piping", DWM 4266, September 2019;
 - (h) "UST Over-Excavation Checklist", DWM 4267, September 2019;
 - (i) "UST Site Check Checklist", DWM 4268, September 2019;
 - (j) "UST Site Investigation Checklist", DWM 4269, September 2019;
 - (k) "UST Vapor Intrusion Assessment Checklist", DWM 4270, September 2019;
 - (l) "UST Vapor Intrusion Building Assessment Checklist", DWM 4271, September 2019; and
 - (m) "UST Corrective Action Manual", September 2019.
- (2) This material may be inspected, copied, or obtained, subject to copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.
- (3) This material may also be obtained at the Division of Waste Management's Web site at eec.ky.gov/environmental-protection/waste. (17 Ky.R. 1643; eff. 12-19-1990; 22 Ky.R. 323; 921; eff. 11-14-1995; 32 Ky.R. 2121; 33 Ky.R. 465; 739; eff. 9-13-2006; 37 Ky.R. 2704; 38 Ky.R. 269; 523; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018; 45 Ky.R. 1380, 2374, 2642; eff. 4-5-2019; TAm eff. 5-7-2019; TAm eff. 9-25-2019.)